



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MOP/167901

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 10, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Winnebago County Department of Human Services in regard to Medical Assistance (MA), a hearing was held on March 22, 2016, at Milwaukee, Wisconsin. The hearing was rescheduled 7 times prior to the March 22 date, all at petitioner's or his attorney's requests. The matter was held open post-hearing 24 days to allow time for the parties' attorneys to submit closing arguments after a lengthy hearing involving 42 exhibits.

The issue for determination is whether the agency correctly established MA overpayments against the petitioner.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Petitioner's Representative:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Atty. [REDACTED]  
Winnebago County Corporation Counsel  
448 Algoma Blvd.  
PO Box 2808  
Oshkosh WI 54903-2808

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

### **FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. Petitioner received MA (BadgerCare Plus) from at least April 2008- December 2013.
3. When petitioner applied for MA in April 2008, the agency used the petitioner's 2006 taxes (2007 had not yet been prepared) to determine his income, and MA opened.
4. In 2009, the agency used petitioner's 2007 taxes to determine petitioner's income, as well as the Self Employment Income Report Forms (SEIRF) provided by the petitioner to determine his income for March-August 2009. The agency continued to use the SEIRFs provided by the petitioner thereafter to determine income from 2010-2013. This process changed in December 2013 when the agency worker questioned petitioner's SEIRF showing greater expenses than income. At that time the agency worker requested petitioner's taxes. Petitioner was only able to provide 2012 taxes, and therefore for 2014, the agency used his 2012 taxes to determine income.
5. In December 2013 the agency worker also requested petitioner's taxes from 2008-2012 to review for possible overpayment of MA.
6. By February 2015, the agency referred the matter to [REDACTED] for an investigation into petitioner's case. The investigation confirmed numerous businesses owned by petitioner, some of which were successful, some that were sold, and some unsuccessful. Because of the unpredictability of those various ventures, the investigator determined that using petitioner's federal tax forms would be the best way of determining his income for the period in which he received MA.
7. On July 13, 2015 the agency issued MA Overpayment Notices to petitioner advising he and his wife that they had MA overpayments all due to failure to report earned income due to client error:
  - a. Claim # [REDACTED] from May 1, 2008-December 31, 2008 in the amount of \$333.50;
  - b. Claim # [REDACTED] from January 1, 2010-October 31, 2010 in the amount of \$4521.41;
  - c. Claim # [REDACTED] from November 1, 2010-October 31, 2011 in the amount of \$12,765.01;
  - d. Claim # [REDACTED] from November 1, 2011-January 31, 2012 in the amount of \$3767.38;
  - e. Claim # [REDACTED] from February 1, 2012- June 30, 2012 in the amount of \$2946.01;
  - f. Claim # [REDACTED] from July 1, 2012-June 30, 2013 in the amount of \$25,933.55; and
  - g. Claim # [REDACTED] from July 1, 2013-December 31, 2013 in the amount of \$28,543.27.

### **DISCUSSION**

The Department may recover any overpayment of MA that occurs because of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665 [BadgerCare].
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

Wis. Stat. §49.497.

The *BCP Handbook* provides further guidance to the agency on recovery of MA overpayments.

An “overpayment” occurs when BadgerCare Plus benefits are paid for someone who was not eligible for them or when BadgerCare Plus premium calculations are incorrect. The amount of recovery may not exceed the amount of the BadgerCare Plus benefits incorrectly provided. Some examples of how overpayments occur are:

1. Concealing or not reporting income.
2. Failure to report a change in income.
3. Providing misinformation at the time of application regarding any information that would affect eligibility.

**Note:** Overpayments can only be recovered if the member failed to report a change for which they were notified they were required to report.

*BCP Handbook* §28.1 (Release #13-02), available online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>.

I note that there was no dispute that petitioner was required to report a change in income for his MA. Petitioner appeared and testified to the SEIRFs he completed at the request of his worker and provided to the agency. He described being told to average his income because of the fluctuations in it due to the variety of his businesses and their status (e.g., at one point there were three foreclosures ongoing) and due to the fact that his income was determined via taxes by his accountant some five to ten months after the regular tax year. The worker who advised him and accepted his SEIRFs was not present to rebut this credible testimony.

The *BCP Handbook* also provides:

Do not initiate recovery for a BadgerCare Plus overpayment if it resulted from a non-member error, including the following situations:

1. The member reported the change timely, but the case could not be closed or the benefit reduced due to the 10-day notice requirement.
2. Agency error (keying error, math error, failure to act on a reported change, etc).
3. **Normal prospective budgeting projections based on best available information.**

*BCP Handbook*, §28.3 (Release #07-01)(emphasis added). It is this third provision here that applies in this matter. The agency used normal prospective budgeting projections based on the best available information to estimate his income. To have been able to determine his income otherwise would have required an accounting professional and a clairvoyant. There is nothing in the evidence that leads me to believe petitioner was concealing income, even if intent were required here. To the contrary, we can see now that his SEIRFs for 2009 greatly overstated his income. As MA benefits are supposed to be based upon the best estimate of future income, and there is no evidence that he did not provide this, the overpayments shall be rescinded.

### CONCLUSIONS OF LAW

The agency has not correctly established MA overpayments against the petitioner.

**THEREFORE, it is**

**ORDERED**

That the petition herein be remanded to the agency with instructions to rescind and/or cease collection efforts for MA overpayment Claim # [REDACTED], Claim # [REDACTED], Claim # [REDACTED], Claim # [REDACTED], Claim # [REDACTED], Claim # [REDACTED], Claim # [REDACTED], and Claim # [REDACTED]. These actions shall be taken within 10 days of the date of this Decision. In all other respects, the petition is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

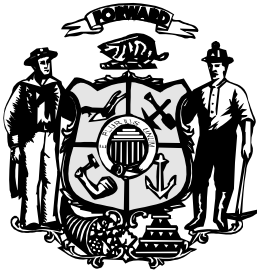
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 26th day of April, 2016

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on April 26, 2016.

Winnebago County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
Attorney [REDACTED]